



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CORAM: F. MUGAMBI, J
COMM CIVIL SUIT NO. E193 OF 2019**

BETWEEN

GLOBAL IMPEX MACHINERY LIMITED DECREE HOLDER/APPLICANT

VERSUS

VLAN CONSTRUCTION LTD	JUDGMENT	DEBTOR/1ST
RESPONDENT			
MANJINDER SINGH SONDH		2ND
RESPONDENT			
JASWINDER KAUR SONDH		3RD
RESPONDENT			

RULING

Introduction and Background

1. This Court is called upon to determine the application dated 31st October 2024, filed by the decree holder. By that application, the applicant seeks leave to summon Manjinder Singh Sondh, the 2nd respondent and Jaswinder Kaur Sondh, the 3rd respondent, who are the last known directors of the 1st respondent, the judgment debtor company, to

attend court and be examined on oath regarding the company's means, assets, liabilities, and the whereabouts of any other directors, as well as to produce the company's books of account.

- 2.** The decree holder further prays that a Notice to Show Cause be issued against the said directors requiring them to explain why execution of the decree should not proceed against them personally. In default of payment of the decretal sum, the applicant also seeks leave to attach and execute the decree directly against the said directors.
- 3.** The application is supported by the affidavit of JAYANTILAL PREMJI VELJI also sworn on 31st October 2024. It is premised on the grounds that despite judgment having been entered in favour of the decree holder in the sum of Kshs. 27,714,503.02 plus costs and interest, the applicant has been unable to trace any attachable assets of the judgment debtor for satisfaction of the decree.
- 4.** It is contended that the judgment debtor and its directors had contracted with the decree holder for the supply of various building materials, which were duly delivered, but the directors failed in their duty

to promote the success of the company, acted with no intention of paying for the goods supplied, and are therefore guilty of fraudulent trading.

- 5.** The applicant further believes that the directors have removed or concealed the company's attachable assets to defeat execution and place them beyond the reach of creditors. In the circumstances, the applicant urges the Court to pierce the corporate veil and hold the directors personally liable so that the decree holder may reap the fruits of its judgment.
- 6.** The application is opposed through a replying affidavit sworn by the 2nd respondent, on 18th November 2024. He avers that the application offends the fundamental principle of company law that upholds the separate legal personality of a company and the limited liability of its shareholders and directors. He argues that the prayers are designed to improperly induce the Court into lifting the corporate veil without sufficient legal or factual basis.
- 7.** He asserts that the judgment debt of KES 42,322,275.25 arose from a breach of contract

linked to the failure of a third party, Rama Homes Limited, on whose projects the building materials supplied by the decree holder were utilized. He maintains that the judgment debtor has a valid claim against Rama Homes Limited for approximately KES 90,612,920.00, which is the subject of pending litigation in **Milimani HCCC No. 341 of 2019 - Vlan Construction Limited V Rama Homes Limited**. A copy of the amended plaint in that suit is annexed to the affidavit.

8. Mr. Sondh contends that the existence of this pending suit demonstrates that the judgment debtor was engaged in legitimate business and not fraudulent trading as alleged. He argues that all the goods supplied by the decree holder were used in bona fide construction projects, specifically the Jumeirah Heights project undertaken in collaboration with Rama Homes Limited. Accordingly, he urges the Court to find that the company was not created to defraud creditors, but was engaged in genuine business transactions, with the outstanding debts being attributable to the default of Rama Homes Limited rather than any fraudulent intent by the directors.

9. In its supplementary affidavit, the decree holder responds to the 2nd respondent's replying affidavit, noting that he had not demonstrated why the company's directors should not be summoned for oral examination under **Order 22 Rule 35 of the Civil Procedure Rules**. The decree holder emphasizes that an application under this rule is distinct from piercing the veil of incorporation, and that it is entitled to have the directors examined on oath regarding the company's state of affairs.
10. The decree holder stresses that the judgment debtor does not dispute its indebtedness and has shown no intention or effort to settle the decretal sum. It rejects the assertion that the debt arose from a third-party breach involving Rama Homes Limited, pointing out that the judgment debtor's previous attempts to set aside the summary judgment and to join Rama Homes as a third party were struck out for failure to comply with court directions requiring a deposit of the decretal sum in a joint interest-earning account. In fact, by its ruling of 1st November 2023, the Court confirmed that the decree holder was at liberty to execute the

judgment due to the judgment debtor's persistent non-compliance.

- 11.** The affidavit characterizes as disingenuous the renewed reliance on Rama Homes Limited, observing that neither the Court nor the decree holder is privy to those claims, since Rama Homes has never been enjoined in the proceedings. Moreover, the mere pendency of a separate suit against Rama Homes does not shield the judgment debtor's directors from being examined about the company's affairs.
- 12.** The decree holder maintains that, should the directors fail to provide the necessary disclosures during oral examination, it would be just and equitable for the Court to pierce the corporate veil and hold them personally liable. This is because, despite being aware of the decree for nearly five years, they have taken no steps to satisfy it, even while admitting the company has no traceable assets. It is further asserted that the directors have misused the company's corporate personality to obstruct execution.

13. Accordingly, the decree holder reiterates its support for the application to orally examine the directors and, in default of compliance, to execute the decree personally against them.

Analysis and Determination

14. I have carefully considered the application, the affidavits on record, the rival submissions, and the authorities cited. The issue that falls for determination at this stage is whether the decree holder has made out a case for the oral examination of the directors of the judgment debtor under **Order 22 Rule 35 of the Civil Procedure Rules**. It provides that:

“Where a decree is for the payment of money, the decree-holder may apply to the court for an order that—

(a) the judgment-debtor;

(b) in the case of a corporation, any officer thereof; or

(c) any other person,

be orally examined as to whether any or what debts are owing to

the judgment-debtor, and whether the judgment-debtor has any and what property or means of satisfying the decree, and the court may make an order for the attendance and examination of such judgment-debtor or officer, or other person, and for the production of any books or documents.”

- 15.** The object of this provision is clear: it is intended to aid the decree-holder in discovery of assets and means of satisfaction of a lawful decree. It recognizes that execution may be obstructed not merely by the absence of assets in plain sight, but also by concealment, dissipation, or the withholding of information regarding the financial position of the judgment debtor.
- 16.** This position was aptly captured by Ringera J (*as he then was*) in **Ultimate Laboratories V Tasha Bioservice Ltd, HCCC No. 1287 of 2000**, where the learned Judge stated:

“The objective of an examination of a company’s director or officer under Order XX1 Rule 36 is to obtain discovery, for the purpose of execution of a decree against the company, as to whether any or what debts are owing to the judgment debtor and whether the judgment-debtor has any and what property or means of satisfying the decree.”

17. I entirely adopt that reasoning. The Court’s jurisdiction under **Order 22 Rule 35** is not contingent upon proof of fraud or the lifting of the corporate veil. Those are separate and weightier issues that may arise later, depending on the evidence elicited during such examination. At this stage, the only threshold is whether there exists an unsatisfied money decree and whether the decree-holder has demonstrated difficulty in tracing assets available for execution.

18. On the facts before me, it is not in dispute that judgment was entered against the judgment debtor

and a decree issued on 27th May 2020 for Kshs. 27,714,503.02 plus costs and interest, which remains unsatisfied more than five years later. It is possible that attempts at execution have been frustrated as contended, and no attachable assets of the judgment debtor have been disclosed or traced. This may explain the prolonged failure to satisfy the decree and strongly militates in favour of intervention by the Court to facilitate discovery through examination of the company's officers.

- 19.** The judgment debtor, in its replying affidavit, devoted much energy to resisting the prayer on the basis that the application was an impermissible attempt to pierce the corporate veil. With respect, this argument misapprehends the scope of **Order 22 Rule 35**. The Rule does not in itself abrogate the doctrine of corporate personality under **Salomon V Salomon & Co Ltd, [1897] AC 22**.
- 20.** Rather, it recognizes that when a decree is unsatisfied, directors and officers of a company, who are presumed to be the custodians of its affairs, may be compelled to account to the Court by disclosing information concerning the company's means. It is only if such examination discloses

evidence of fraud, bad faith, or misuse of the corporate form to defeat legal obligations that the question of lifting the corporate veil may properly arise.

21. Accordingly, the preconditions for granting the orders sought are satisfied in this case: there is an unsatisfied monetary decree; there is evidence that execution has been frustrated for several years; and there is no dispute as to the indebtedness of the judgment debtor. In these circumstances, it is both just and necessary that the directors identified in the CR12 be summoned to attend court for oral examination. This will enable the decree holder, and ultimately the Court, to ascertain the true financial posture of the judgment debtor and the means, if any, by which the decretal sum may be settled.

Disposition

22. In light of the foregoing, I am satisfied that the application has merit. I accordingly allow it to the extent of prayer (2). Accordingly:

- i. Leave is granted to the decree holder to issue summons to MANJINDER SINGH SONDH AND JASWINDER KAUR***

SONDH, the last known Directors of the judgment debtor/respondent company and to compel the said directors to be orally examined on oath as to the particulars and whereabouts of other directors (if any), the judgment debtor's means, assets and liabilities and to produce the books of accounts as the directors of the respondent company.

ii. The directors shall attend Court on a date to be fixed, for purposes of oral examination under Order 22 Rule 35 of the Civil Procedure Rules.

iii. The question of whether the corporate veil should be lifted, and whether the directors may ultimately be held personally liable, is a distinct issue that will only fall for consideration upon completion of the examination and upon proper evidential foundation being laid.

iv. The costs of the application shall await the final outcome.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI
THIS 23RD DAY OF OCTOBER 2025.**

**F. MUGAMBI
JUDGE**

Original file copy